GLEN MORGAN

IBLA 89-444 Decided January 7, 1992

Appeal from a decision of the Acting Deputy State Director, Colorado State Office, Bureau of Land Management, affirming as modified a decision of the Acting Area Manager, Little Snake Resource Area Office, Colorado, Bureau of Land Management, requiring inspection and rehabilitation of a well site and access road. C-17030 (SDR-CO-89-8).

Affirmed.

1. Oil and Gas Leases: Expiration--Oil and Gas Leases: Stock-Raising Homestead Act of 1916

   An operator of an oil and gas lease is responsible for reclamation of land leased for oil and gas purposes, even after expiration of the lease and even where the surface estate is privately owned. Such reclamation includes the restoration of any area within the lease boundaries disturbed by lease operations to the condition in which it was found prior to surface disturbing activities.

APPEARANCES: Glen Morgan, pro se; Michael F. Deneen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Glen Morgan has appealed from a decision of the Acting Deputy State Director for Mineral Resources, Colorado State Office, Bureau of Land Management (BLM), dated April 17, 1989, affirming, as modified, a March 6, 1989, letter-decision of the Acting Area Manager, Little Snake Resource Area Office, Colorado, BLM, requiring inspection and rehabilitation of a well site and access road.

Effective November 1, 1972, BLM, acting pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), issued a 10-year noncompetitive oil and gas lease, C-17030, to Jean A. Manion for 275.59 acres of land situated in lot 6 and the NE¼ NE¼, W½ NE¼ and E½ NW¼ sec. 19, T. 8 N., R. 92 W., and the SE¼ NE¼ sec. 24, T. 8 N., R. 93 W., sixth principal meridian, Moffat County, Colorado. At that time, all of the lands covered by the lease had been patented subject to a reservation

of minerals to the United States. Following issuance of the lease, 100 percent of the record title in the SE¼ NE¼ sec. 24, T. 8 N., R. 93 W., was conveyed by mesne assignments to M. Peyton Bucy and Larry J. Manion, each of whom acquired an undivided 50-percent interest in those lands. In October 1982, both Bucy and Manion designated Morgan as operator for sec. 24.

On October 27, 1982, Manion and Morgan entered into an operating agreement under which Morgan agreed to commence drilling an exploratory well prior to the expiration date of the lease in return for the assignment of a working interest in the subject lease. The operating agreement was approved by BLM, effective October 29, 1982.

Efforts to drill a well on the leased lands within sec. 24 prior to the expiration of the subject lease at midnight on October 31, 1982, began on October 20, 1982, with the submission to the Geological Survey (Survey) of a notice of staking (NOS) for the No. 1-24 Federal well, signed by Morgan. Attached to the NOS was a portion of a 1969 Survey topographic map of the leased area and surrounding land which indicated that access from a county road to the proposed drilling site would be obtained by using an existing unimproved access road, coming either from the east or the west. This road crossed land, including the leased land, the surface estate of which is privately owned. The NOS noted that the operator had a surface use agreement with the landowner, Andrew Peroulis, thus obviating the need for a Federal right-of-way.

On October 25, 1982, an application for a permit to drill (APD) the No. 1-24 Federal well in the SE¼ NE¼ sec. 24 was submitted to Survey. Attached to the APD was another copy of the 1969 Survey topographic map (Exh. E1) which indicated that access to the proposed drilling site would be obtained by using another existing access road approaching the site from the north, again entirely crossing Peroulis' land. 1/ The map described the access road originally noted on the map submitted with the NOS as an "alternate" route.

Also attached to the APD was a document entitled "Multi-Point Requirements To Accompany A.P.D." (MPR) (Exh. D), dated October 23, 1982. The MPR stated that the "[n]o new access roads will need to be constructed" and that existing access roads "need no improvement" (MPR at 1). The MPR further stated that, in the event of production, such roads would be graded and surfaced and drainage constructed; otherwise, the MPR provided for no such

---

1/ This access road consisted of two short sections, both denoted as unimproved, one of which ran from the county road south to the point where the road veered off to the west to a designated oil well and another which at that point continued south to the proposed drilling site. While the first portion of the road was printed on the map and the second handdrawn, there is no evidence that the entire road was not existing at the time of submission of the APD. Indeed, the map contained the handwritten notation that the handdrawn road was an "existing" road.

activities during drilling operations. At best, it provided that "[m]aintenance and routine blading will be performed as required." Id.

Upon abandonment of the well, the MPR provided that the "site will be restored to original condition as nearly as possible," with "[b]ackfilling, leveling and contouring * * * planned as soon as all pits are dried." Id. at 5. Also, the MPR stated: "The soil banked material will be spread over the area. Revegetation will be accomplished by planting mixed grasses as per formula provided by the surface owner and B.L.M. Revegetation is recommended for road area, as well as around drill pad." Id. The MPR further stated: "The rehabilitation operations will begin immediately after the drilling rig is removed. * * * Planting and revegetation is considered best in Summer, 1983, unless requested otherwise." Id. Finally, the MPR stated that the "aforegoing restoration plans are hereby expressly made subject to additional stipulations and requirements which may be prescribed by the B.L.M." Id. Also attached to the APD was a document entitled "Surface Use Agreement" (SUA) (Exh. J), dated August 28, 1980, between Peroulis and Morgan. In the SUA, Morgan agreed to various measures designed to protect Peroulis' sheep grazing operations in connection with oil and gas leasing operations. No mention was made of an existing access road except to the extent that Morgan was required to upgrade and maintain that road in the event of production. 2/ Nor did the SUA contain any express requirement that Morgan take any action to rehabilitate the well site or access road at the conclusion of either drilling or production operations.

Also attached to the approved APD is a form entitled "Conditions of Approval for Notice to Drill" (COA). This form, which sets forth many general conditions, provided, inter alia, that if surface restoration had not been completed at the time the initial report of abandonment was filed, "a follow-up report on form 9-331 should be filed when all surface restoration work has been completed and the location is considered ready for final inspection."

In addition, the COA referred to attached "Supplemental Stipulations." Attached to the COA is an October 25, 1982, letter from the Area Manager, Little Snake Resource Area Office, setting forth additional stipulations required by BLM. Included was the following:

> In the event of a dry hole, the reserve pit will be allowed to dry, then backfilled. The disturbed areas will be recontoured to blend with the local topography. Reseeding is to be done late in the fall, before the ground freezes, using the following mixture, or surface owner's mixture: Intermediate wheatgrass 75% Western wheatgrass 25%.

Along with the MPR, COA, and the SUA, a document entitled "Rehabilitation Agreement" (RA), signed both by Morgan and Peroulis, and filed

---

2/ The SUA also provided that, in the event of production, the surface owner would receive damages in the amount of $100 per acre per year, the acreage computation to include the access road across the surface estate.

with Survey on October 29, 1982, is currently found in the pertinent portion of the record attached to the approved APD. 3/ The RA provided that,
upon abandonment of the well, the site "will require reshaping to conform to existing topography," and declared that the "[e]ntire disturbed area will be reseeded" with the following mixture: "Intermediate wheat grass tall variety [and] Russian wild rye." It also expressly provided that the "[a]ccess road will be rehabilitated and reseeded using the same seed mixture."

On October 29, 1982, Survey approved Morgan's APD, noting that such approval was subject to attached stipulations. The No. 1-24 Federal well was spudded on October 31, 1982, 4/ completed on July 15, 1983, and because of the absence of production of any gas from the target formation, was plugged and abandoned. In a September 7, 1983, sundry notice (Form 9-331), received by BLM 5/ on September 8, 1983, Morgan reported the following activities:

> 7-15-83-TD [Total Depth] 755' at 5 PM. Ran electric logs * * *. No commercial hydrocarbons * * *. 7-16-83 * * * Plugged entire hole * * *. Removed rig and equipment; cleaned up location; fenced pits. Waiting for pits to dry. 8-8-83 Removed fencing; backfilled pits; recontoured location. 8-29-83 Disked area to prepare for revegetation. Pursuant to discussions with Craig BLM and surface owner, reseeding will be postponed until just prior to fall freeze to ensure proper germination. Abandoned location.

The sundry notice was not approved by BLM, nor was any supplemental sundry notice ever filed as required by the COA. 6/

3/ Since the documents in the relevant case file are not in chronological order of receipt, there are certain difficulties in determining what documents were before BLM when the APD was signed. The APD was ultimately approved on Oct. 29, 1982, the same date that BLM received the RA. While the RA is situated under the approved APD, from which one would normally
conclude it was filed prior to APD approval, the almost random sequential placement of documents in the case file, evincing no relationship to the date stamps affixed thereto, militates against such an assumption.

4/ In a Mar. 26, 1989, letter to the Acting Area Manager, Morgan reported that the well was drilled with a "small, truck-mounted, portable rig contiguous to an existing access road." (Emphasis in original.) This is, in part, confirmed by Robert Eogan, an employee of the Minerals Management Service, who, in an Apr. 22, 1983, memorandum to the files, described the rig in use over midnight on Oct. 31, 1982, as a "small rathole rig."

5/ At the time of submission of the sundry notice, the functions of Survey with respect to the management of onshore oil and gas lease operations had been transferred to BLM.

6/ An undated and unsigned notation on the sundry notice states: "Downhole Plugging OK - Waiting On Surface Rehab To Approve." In a subsequent memorandum to the District Manager, dated Mar. 13, 1989, the Area Manager stated that approval could not be recommended, noting: "The Federal

By decision dated September 23, 1983, BLM extended the original term of the subject lease through October 31, 1984, and so long thereafter as paying quantities were produced from the lease based on BLM's conclusion that diligent drilling operations had been conducted over the expiration date of the lease.

Effective September 1, 1983, BLM approved assignment of 75 percent of Manion's 50-percent record title interest in the SE¼ NE¼ sec. 24 to Morgan. Morgan thereby acquired a 37 and 1/2-percent record title interest in the SE¼ NE¼ sec. 24. By decision dated September 30, 1983, BLM accepted a rider to Morgan's statewide bond with the Travelers Indemnity Company (Travelers), extending coverage of the bond to the leased lands. BLM stated that the bond "covers compliance with all the terms and conditions of the lease, including * * * the proper plugging and abandonment of all wells drilled on the leasehold."

Thereafter, in the absence of production in paying quantities or other basis for a further extension, the subject lease was deemed to have expired at the conclusion of its extended term on October 31, 1984. Subsequently, at the request of Travelers, BLM, by decision dated March 17, 1986, terminated Travelers' liability under Morgan's statewide bond as of March 24, 1986. However, BLM stated that Travelers would remain liable "for those interests and activities of [Morgan] to which the bond became applicable before the notice [that Travelers desired to terminate liability] was received or within 30 days after its receipt." Also, BLM stated that "[f]ull termination is not allowed until all liability which may have accrued under the bond has been determined and settled to the satisfaction of the authorized officer."

An unsigned report of a field examination of the well-site, dated October 7, 1986, stated that it did not appear that seeding efforts were successful, noting that certain grasses had not become established on the well site, and that one of the access roads to the well site had deep ruts which might have been caused by the operator. 7/ Another notation made by a BLM employee, dated October 9, 1986, declared that an October 8, 1986, inspection of the leased lands had disclosed that the well "has been recontoured satisfactor[ily] but reseeding is not complete."

By letter dated October 10, 1986, the Area Manager notified Morgan that, based on an October 7, 1986, inspection, BLM had determined that rehabilitation of the well site and access road had not been properly completed in accordance with the "[MPR] and Supplemental Stipulations made a part of the approved APD, as well as the * * * rehabilitation

---

fn. 6 (continued)
No. 1-24 well location was inspected in October of 1986 and establishment of perennial vegetation was not satisfactory. We attempted to contact the operator following that inspection, but never received a response."

7/ The author of this memorandum noted that, since it was unclear which of the possible access roads had been used, any determination of the operator's liability would require a meeting with the operator and landowner.

agreement with the surface owner." In the case of the well site, the Area Manager stated that proper reclamation would "require reseeding with the prescribed seed mixture." In the case of the access road, the Area Manager stated only that it "has not been properly rehabilitated." The Area Manager concluded: "These conditions must be satisfactory to the surface owner and this office before surface reclamation abandonment can be approved for this location."

The record indicates that BLM received no response from Morgan with respect to the Area Manager's October 1986 letter, nor is there any indication that Morgan received this letter. The matter then languished for some time. Although the record does not indicate whether BLM made any other efforts to contact Morgan until March 1989, there are indications that BLM may have been hampered by appellant's failure to maintain a correct address of record. In early 1989, however, BLM apparently obtained a new address from the Colorado Oil and Gas Commission.

By letter dated March 6, 1989, BLM again wrote to Morgan regarding deficiencies in the reclamation of the well site and access road. The Acting Area Manager informed Morgan that, in October 1986, BLM had determined that "establishment of a perennial plant community has not occurred and rills and gullies have formed along the access road causing excessive erosion" and stated that "[t]hese problems must be corrected before surface abandonment and termination of your liability for this location is approved." Accordingly, the Acting Area Manager required compliance with three "orders," specifically:

> 1. An onsite conference will be held to reach mutual agreement and delineate the work required to correct the problems identified. You must contact this office by March 24, 1989 to schedule this onsite conference, which must be held by May 5, 1989.
>
> 2. Work to correct erosion, identified at the onsite conference, will be completed by May 19, 1989.
>
> 3. Work to establish a plant community which is diverse, self-regenerating, perennial, adapted to the area and providing similar vegetative cover as native communities will be completed by October 31, 1989.

Finally, the Acting Area Manager stated that failure to comply with these provisions "will be considered an Incident of Noncompliance [INC] and will be subject to assessments and penalties."

Morgan responded to the Acting Area Manager's March 1989 letter-decision by letter dated March 26, 1989, objecting to all of the enumerated requirements. In general, Morgan contended that BLM was barred by Federal and State statutes of limitation, the doctrines of waiver, estoppel and laches, and the constitutional requirements of equal protection and due process from requiring an onsite conference and reclamation with respect to his well site and access road. Morgan also challenged the validity of

his APD to the extent that it was construed to set requirements for the reclamation of a private surface estate. Morgan also argued that he was not responsible for reclamation of the access road where he did not proximately cause the erosion to the road. Finally, Morgan argued that he could not be required to participate in an onsite conference prior to May 5, 1989, where to do so would either constitute a trespass on a private surface estate or violate the provision in the SUA precluding entry during May of any year because it is the lambing season. Morgan requested the Acting Area Manager to rescind his three "orders." However, pending resolution of the matter, Morgan offered to schedule an onsite conference after April 18, 1989.

Morgan followed his March 26 letter with a March 31, 1989, letter directed to the Colorado State Director, formally requesting a technical and procedural review (TPR) of the Acting Area Manager's March 1989 decision, pursuant to 43 CFR 3165.3(b). In support of that request, Morgan incorporated by reference all of the reasons set forth in his March 26 letter.

On April 4, 1989, BLM re-inspected Morgan's well site. The inspection revealed the presence of large Indian ricegrass plants dispersed widely over the area, an even distribution of cheatgrass and a dense accumulation of various weeds, possibly Russian thistle and kochia. The report concluded that revegetation required under the APD had not been achieved and that the site showed no evidence of a successful reseeding program (Memorandum to the file from Ole Olsen, dated Apr. 5, 1989).

On April 17, 1989, the Acting Deputy State Director affirmed the decision of the Acting Area Manager. The Acting Deputy State Director first concluded that BLM had authority under the APD, specifically the RA incorporated by the APD, to require rehabilitation of the access road. The decision rejected appellant's assertion that the Area Manager's order was barred by the statute of limitations, since BLM had never approved the sundry notice of abandonment but had withheld action thereon until 1986. This delay was justified on the ground that, given conditions in northwest Colorado, BLM could not discern whether reclamation had been successful until the expiration of that time period. Subsequent action, BLM contended, was, thus, not timebarred by 28 U.S.C. § 2415 (1988). The decision similarly rejected appellant's contention that BLM lacked authority to regulate rehabilitation of the privately-owned surface of split-estate lands, noting that Morgan could properly enter the leased land for the purposes of reclamation where such activity was connected with the beneficial use of the Federally-owned minerals. The decision did concede that the SUA barred entry during the month of May, but pointed out that, even under the SUA, entry during May might be made with the consent of the landowner.

Finally, the decision concluded that, although the Acting Area Manager was within his authority in requiring reclamation of the well site and access road, the extent of or the time necessary for such reclamation could not be determined until after an onsite inspection of the area, at which the operator could participate. Accordingly, the Acting Area

Manager's decision was modified to provide only that Morgan should contact the Resource Area Office to schedule an onsite inspection no later than June 30, 1989. Noting that Morgan was not required to participate in such an inspection, the decision noted that his failure to schedule one would not result in issuance of an INC. However, the decision went on to say that if appellant chose not to participate, BLM personnel would determine the amount of rehabilitation needed without input from appellant. Appellant would then be ordered to complete the required rehabilitation by a date certain, failing in which he would be liable for the issuance of an INC and appropriate penalties and assessments.

Morgan timely appealed from the Acting Deputy State Director's decision, requesting that the Board stay the effectiveness of that decision pending resolution of the matters appealed. In support of his appeal, appellant largely reiterated the arguments advanced in his March 26, 1989, letter to BLM.

Because of substantial questions related to both the scope of BLM's proposed order as well as the extent of BLM's authority to order corrective actions in the circumstances above described, the Board, by Order of July 7, 1989, stayed the effect of the appealed decision pending a full review of the matters involved herein. In that Order, the Board propounded certain questions to BLM, attempting to ascertain the extent of ameliorative actions contemplated by BLM. Of particular concern to the Board was whether BLM was attempting to require reclamation outside of the lease boundaries and whether BLM was endeavoring to enforce private third-party agreements rather than the requirements which it had, itself, imposed as a condition of APD approval. BLM duly responded to these inquiries and appellant filed a statement addressing these responses.

In its response to our Order, BLM expressly disavowed any intention of requiring reclamation activities beyond the lease boundaries. See BLM Brief at 4. Thus, that issue is moot. With respect to the second major concern raised by the Board in our Order, BLM noted that it was its contention that both the SUA and the RA were incorporated into the APD. Thus, this issue remains to be decided in the context of the instant appeal. There are, however, other issues also involved to which we now turn.

The first question which we must address is whether appellant can properly be held responsible for reclamation of the well site and that portion of the access road within the leased area at a time when the subject lease had already expired.

[1] It is BLM's position that appellant is responsible for reclamation of the leased area even after expiration of the lease where the obligation to reclaim accrued during the term of the lease (BLM Brief at 2). BLM argues that such responsibility only terminates at the expiration of the 6-year period provided for by the statute of limitations set forth at 28 U.S.C. § 2415 (1988).

Section 2(q) of the subject lease provided that the lessee agreed that upon "expiration of this lease * * * and to the extent deemed necessary by

the lessor to, * * * so far as reasonably possible, restore the surface of the leased land and access roads to their former condition." It is clear, therefore, that, under its own terms, the lease was issued subject to the continuing obligation on the part of the lessee to restore the surface of the leased land even after expiration of the lease.

In addition, while the applicable Departmental regulation in effect at the time of abandonment of the subject well, 43 CFR 3162.3-4 (1983), expressly required that each newly-completed well in which oil or gas was not encountered in paying quantities be plugged and abandoned "in accordance with a plan first approved in writing * * * by the authorized officer," there is no indication that the obligation to properly plug and abandon a well drilled during the lease term terminated upon expiration of the lease. Furthermore, the specific requirements for reclamation, as set forth in the APD and stipulations incorporated therein, are, as we stated in Fuel Resources Development Co., 84 IBLA 17, 23 (1984), "contractual in nature" and, thus, would survive expiration of the underlying lease. Accordingly, we hold that BLM properly required appellant, who had acquired a leasehold interest on September 1, 1983, to restore the surface of the leased land even after the lease's expiration on October 31, 1984. See Gerald Dee Foster, 115 IBLA 233 (1990) (prospecting permit); E. B. Brooks, Jr., 92 IBLA 282 (1986) (lease).

Appellant attempts to invoke the Colorado statutes of limitation as a basis for his argument that BLM is precluded from taking actions directed towards requiring reclamation of the subject land where it does not act within the specified time period after the date BLM became aware that reclamation had not been completed satisfactorily. These State statutes of limitation, however, have no applicability to BLM's actions where they would constrain the exercise of BLM's authority under section 9 of the Stock Raising Homestead Act (SRHA), as amended, 43 U.S.C. § 299 (1988), and the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181-287 (1988), and its implementing regulations, and Congress has manifested no intention to be bound by such State statutes. See United States v. Nashville, Chattanooga & St. Louis Railway Co., 118 U.S. 120, 125 (1886); United States v. Miller, 28 F.2d 846, 847, 851 (8th Cir. 1928); Lamar M. Richardson, Jr., 42 IBLA 333, 335 (1979).

Appellant's obligation to restore the surface of the leased land is not altered by the fact that the surface estate is privately owned. Thus, section 2(q) of the subject lease expressly provided that the "lessor may prescribe the * * * restoration to be made with respect to the leased lands * * * whether or not owned by the United States." Appellant's contention that the requirement that he reclaim the surface of land which is privately owned is beyond the authority granted by Congress must also be rejected. BLM's actions in this matter are fully consonant with the duties imposed under section 9 of the SRHA, which, as both appellant and BLM agree, was the legal authority under which the leased land was conveyed out of the United States, subject to a reservation of the minerals. That section also provides that reserved to the United States is the "right to prospect for, mine, and remove the [reserved minerals]," which right encompasses "all purposes reasonably incident to the mining or removal of the coal or

other minerals." 43 U.S.C. § 299 (1988). As long interpreted by the Department, such purposes necessarily include the reclamation of the surface of the affected land following the completion of mining and removal of the minerals. See The Montana Power Co., 72 I.D. 518, 521 (1965). Indeed, to hold otherwise would, in many cases, leave the owner of the surface estate without remedy for damage to that estate where he would only be entitled to compensation for damages to crops, tangible improvements and the value of the land for grazing purposes. See United States v. Browne-Tankersley Trust, 98 IBLA 325, 341 (1987).

The next issue concerns the nature of the reclamation that may properly be required of appellant. In deciding this, we must first address the specific question whether the RA, signed by appellant and Peroulis, which set forth specific reclamation requirements, was incorporated in the APD. Upon a finding that it was so incorporated, the requirements, although initially imposed by the private parties to the agreement, would become obligations of the Federal lessee and operator to the extent that the Federal Government had authority to regulate the affected matters. See Yates Petroleum Corp., 91 IBLA 252, 260 n.7 (1986). The question at that point would not be what was the intent of the private parties to the agreement, but what did BLM, in deciding to incorporate the agreement in the APD, intend that the lessee and operator do to fulfill the requirements. As such, such obligations would be subject to interpretation by BLM. Whether or not the RA was incorporated is the question to which we now turn.

BLM argues that the RA form was provided by Survey to appellant and that the signed form was returned to Survey on the same day that the APD was approved (BLM Brief at 5, 7). 8/ BLM argues that the RA was intended by Survey to constitute part of the "operating plan" required by stipulation number 1 attached to the subject lease, to the extent that it provided specific measures for restoration of the surface of the leased area. 9/ Id. at 7. Accordingly, BLM concludes that the RA was incorporated into the approved APD. Id. at 5.

There is nothing in the APD, however, which expressly incorporates the RA or, indeed, even states that submission of the RA is a condition of Survey's approval of the APD. Compare with Fuel Resources Development Co., supra at 19 n.2. The first page of the APD refers to a number of attached documents, submitted by appellant at the time it sought approval of the APD. There is no reference therein to the RA. The RA cannot be considered incorporated simply because the signed form was provided by Survey and returned to Survey on the same day as issuance of the approved APD.

8/ Whether or not Survey received the RA prior to the issuance of the APD cannot be definitively established by reviewing the record. See n.3, supra. 9/ Stipulation number 1 required the lessee, in cooperation with the District Manager, to prepare an "operating plan for surface protection," and stated that "[s]uch plan shall contain reasonable provisions * * * to provide for the practicable restoration of the land surface and vegetation."

Incorporation of such documents into an APD requires, at a minimum, an expression in the APD, or some other contemporaneous document, of an intent to incorporate the RA. 10/ None exists. Thus, we cannot conclude that the RA was incorporated in the approved APD. 11/

Nevertheless, we must conclude that, despite the fact that the RA cannot be considered to be incorporated in the approved APD, appellant was still required to reclaim, in addition to the well site, that portion of the access road within the leased area to the extent that it had been disturbed during the lease term by appellant's activities.

Section 2(q) of the subject lease required the lessee, to the extent deemed necessary by the lessor, to "restore the surface of the leased land and access roads to their former condition." Stipulation number 5 attached to the lease provided further that "[a]ll significantly disturbed areas no longer needed for operations must be returned to as near the original condition as practicable or as mutually agreed upon by the lessee and the District Manager." This is echoed in section 10 of the MPR, which states that, upon abandonment of the well, the site "will be restored to original condition as nearly as possible."

It is clear from this that appellant, as the operator and one of the holders of the subject lease, was required to reclaim all of the leased area disturbed by his activities, which included drilling operations and any road work. Further, it is clear that, at the time of the Acting Deputy State Director's April 1989 decision, the extent of reclamation was to be limited to restoration of the land to the condition that obtained prior to the authorization of such activities by approval of the APD. Appellant was not required to eliminate any existing disturbance which predated his own actions. Thus, under the present circumstances, where an access road existed at the time of surface disturbing activities, appellant would not be required to fully reclaim the road, but merely to restore the road to its condition at that time, thereby removing only the effects of appellant's activities. 12/

10/ BLM also argues that the RA should be considered incorporated in the approved APD where the RA states that "[a]ll operations [are] subject to attached surface agreements." There is nothing to indicate what surface agreements were being referenced in the RA. At best, this merely indicates that the RA intended to incorporate other agreements, not that it was incorporated in any other agreements.

11/ This, of course, does not make the RA a nullity. Clearly, to the extent that appellant fails to abide by its terms, Peroulis may have a remedy in state court. We merely hold that, since it was not incorporated into the APD, BLM lacks independent authority to enforce any terms of that agreement. As noted in the text, however, BLM does have authority to enforce reclamation as required by the lease, the APD and the SUA.

12/ Whether, and to what extent, approval of an APD could be preconditioned on an agreement by the operator to upgrade disturbed areas beyond the condition existing prior to his activities we need not decide. There

The specific requirements for reclamation are principally set forth in the MPR, which is incorporated in the approved APD. Section 10 of the MPR states in relevant part that:

> Backfilling, leveling and contouring are planned as soon as all pits have dried. * * * The soil banked material will be spread over the area. Revegetation will be accomplished by planting mixed grasses as per formula provided by the surface owner and B.L.M. Revegetation is recommended for road area, as well as around drill pad. * * * The rehabilitation operations will begin immediately after the drilling rig is removed. * * * Planting and revegetation is considered best in Summer, 1983, unless requested otherwise.

(MPR at 5).

Section 10 of the MPR, however, also states that "[these] restoration plans are hereby expressly made subject to additional stipulations and requirements which may be prescribed by the B.L.M." Id. The "Supplemental Stipulations" contained in the Area Manager's October 1982 letter provide further detail regarding the required reclamation. The letter specifies that the reserve pit is to be allowed to dry and then backfilled and that "disturbed areas" generally are to recontoured and reseeded in the late fall using a grass mixture specified either by BLM or the surface owner.

Further consideration of the precise measures which need to be undertaken would be premature at the present time, since these remain to be determined in light of the conditions found during the onsite inspection. As noted above, appellant has been invited to participate in this inspection. Appellant, however, questions whether he can obtain access to the leased land across the land owned by Peroulis in order to participate in an onsite inspection and ultimately reclaim the leased land, arguing that he has "no legal authority" to cross these private lands (SOR at 4) since his agreement with Peroulis has lapsed. In our July 1989 order, we further raised the question of whether the United States could, if necessary, require the surface owner to permit access by appellant.

After reviewing BLM's response, it is clear that the question of whether appellant may obtain access to the leased land is presently moot. BLM states that it has assurances from Peroulis, who desires reclamation of the leased land, that he will grant appellant permission to cross his private land in order to reach the leased land for purposes of inspection and subsequent reclamation. See BLM Brief at 6. We, therefore, need not reach the question of whether BLM might require the surface owner to provide

---

fn. 12 (continued)
being no such agreement in this case, there can be no requirement imposed other than that appellant return the surface to the condition obtaining at the time he entered upon the land.

appellant access to the leased land in order to complete reclamation where the owner refuses to consent to such access. 13/

While appellant challenges BLM's assertion that he is still liable for reclamation of the leased area on the basis that he has been denied the equal protection of the law where BLM has not required other operators to reclaim their well sites, there is no evidence that BLM has treated other operators differently. Even assuming such a showing could be made, that would not justify overlooking appellant's apparent failure to adequately reclaim the subject land.

Appellant also contends that BLM improperly failed to take any action against the other holders of leasehold interests in the subject lease. We conclude that BLM could proceed solely against appellant where he was the designated operator throughout the drilling of the subject well and all subsequent reclamation activities. As such, he was the entity responsible, under the Departmental regulations, for complying with the requirement to properly plug and abandon the well and effectuate reclamation. See 43 CFR 3162.3-4(a). Likewise, at the time of abandonment of the subject well, the operator, as the agent of the lessee, could be held responsible for compliance. See 43 CFR 3162.3(b) and 3162.3-4(a) (1983); Celeste C. Grynberg, 106 IBLA 387, 390-91 (1989). Finally, an operator is generally liable for compliance with the lease obligations. See KernCo Drilling Co., 71 IBLA 53, 57-58 (1983). This is not to say that, to the extent that appellant is now held liable, he may not seek recompense from the other lessees. That, however, is a possible remedy which appellant is free to choose; it does not affect BLM's authority to require appellant to properly reclaim the lease area.

Appellant also contends that BLM is barred from requiring reclamation of the subject land by the doctrine of laches. No basis is offered by appellant for application of this doctrine in the present case. Nor can we discern any such basis. We cannot find the unconscionable delay with the attendant prejudice to appellant required for invocation of the doctrine of laches against BLM. See S.E.R., Jobs for Progress, Inc. v. United States, 759 F.2d 1, 5 (Fed. Cir. 1985). Clearly, BLM failed to inspect the leased land until October 1986, over three years after appellant's abandonment of the well site, and made no effort to require proper reclamation until that month and again in March 1989. This was at best belated action. Nevertheless, there is no demonstrated prejudice to appellant resulting from this delay. Plainly, appellant was spared the effort and expense of correcting any improper reclamation of the land throughout this time

---

13/ Moreover, we note that, following various stipulations having to do with surface operations and restoration, stipulation number 9 attached to
the lease states: "The lessee is responsible for securing access rights-of-way across privately-owned land to the lease area." There is nothing in the lease to indicate that this responsibility terminated with expiration of the lease where the obligation to restore the affected land continued on after that date.

period. 14/ There is simply no basis for the invocation of the doctrine of laches, even assuming that this doctrine is ever applicable against the United States.

Accordingly, we conclude that the Acting Deputy State Director properly concluded that appellant was liable for the proper reclamation of the land formerly leased to appellant and other parties, which reclamation was to be done in accordance with the approved APD and the stipulations incorporated therein. See Coleman Oil & Gas, Inc., 104 IBLA 363, 366 (1988); E. B. Brooks, Jr., supra at 289; Fuel Resources Development Co., supra at 23-24. There remains only the determination of what reclamation work is necessary.

At this point, appellant apparently would have the Board retain jurisdiction over this matter while he and BLM seek to resolve the question of the scope and timing of reclamation of the leased land disturbed by appellant's operations. We decline to do so. Precisely what is required in the way of reclamation under the APD and incorporated stipulations, if any, is best determined by BLM in the first instance. A proper first step is an onsite inspection. Following that, BLM may then order whatever measures, if any, it deems necessary to fully reclaim the subject land. Appellant will, of course, have a right to appeal from any subsequent order of BLM adverse to him. Such an appeal, however, would be limited only to the question of the proper scope and timing of the work required, if any.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

John H. Kelly
Administrative Judge

14/ We are also constrained to note that nothing prevented appellant during the intervening period of time from informing himself regarding the success of reclamation of the leased land and arranging for the correction of any deficiencies. Indeed, he should have been prompted to do so where he was fully aware that BLM had not accepted the reclamation and the bond had not been finally released.